

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 94-0872 CS
Controlled Substance Excise Tax
For The Tax Period: 1994**

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ISSUE

Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

Pursuant to Criminal Investigations Division reports, taxpayer possessed marijuana on various occasions in 1994. The Department issued the taxpayer a Controlled Substance Excise Tax (CSET) assessment on October 25, 1994. Taxpayer filed a protest of the CSET assessment on November 18, 1994. An administrative hearing was conducted with the taxpayer's representative via telephone conference on February 4, 1999.

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer argues that the imposition of the Controlled Substance Excise Tax constitutes a punishment and violates the Constitutional provision for protection against double jeopardy. The Indiana Supreme Court addressed this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court found that a controlled substance excise tax assessment was a punishment for purposes of double jeopardy analysis. The Court further stated that the jeopardy attaches when the Department serves the taxpayer with its Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand. In determining which jeopardy is barred as the second jeopardy the relevant dates must be considered.

Taxpayer was presented with the Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand on October 25, 1994. It was determined at taxpayer's hearing that the criminal disposition of his case did not occur until March of 1995. The Department finds, in accordance with the law as stated in Cliff, that the tax assessment and jeopardy came first in time and were not barred by the principles of double jeopardy. The Court held that since the Department's assessment was first in time, it does not constitute the double jeopardy. In this case, the Department's assessment came before the taxpayer's plea agreement. The Department finds that taxpayer is responsible for the CSET assessment.

FINDING

The taxpayer's protest is denied.